Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Usage of the Public Switched	)	CC Docket No. 96-263
Network by Information Service	)	
and Internet Access Providers	)	

REPLY COMMENTS OF THE UNITED STATES INTERNET PROVIDERS ASSOCIATION

By Its Attorney

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April 23, 1997

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SUMMARY

The BOCs seek to use their existing dominance over local telephone service to extend their monopoly into the Internet access business. They have provided inadequate service to competing ISPs. They now seek to increase charges to competing ISPs to levels far beyond economic costs to drive them out of business. The BOCs use the congestion that their own inadequate service has created as an excuse to raise ISP rates.

But there is no nexus between the "problem" they vaguely identify and the "solution" they propose. The "problem" was not, as they assert, the result of the failure of ISPs to provide them with accurate forecasts. It is easier to forecast industry-wide growth than the growth of particular firms in a highly competitive and new industry. The BOCs were sufficiently familiar with industry growth patterns to decide to undertake major efforts to enter the industry themselves. Indeed, the off-peak character of Internet traffic increases the efficiency of telephone exchange operations. Internet growth has also stimulated a very large amount of lucrative sales of second lines to individual subscribers.

Competition based on real economic costs, and not Commission mandates fabricated by existing monopolists, is the best way to encourage the development of optional local infrastructure alternatives. Carrier access charges are not based on costs. They are a residue of an industry-wide telephone oligopoly that has been only partially attenuated over the last twenty years and involve a system of pervasive subsidization within the telephone industry. The existing system of carrier access charges should be replaced with a new system that fully reflects real economic costs before any further consideration is given to extending its ambit into a brand new industry.

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The United States Internet Providers Association ("USIPA") respectfully submits the following reply comments in response to other parties' comments concerning the Commission's Notice of Inquiry ("NOI"), 5 Comm. Reg. (P&F) 604, FCC 96-488 (released December 24, 1996), in the above-captioned proceeding.[1]

A. Economically Irrational Access Charges Should Not Burden the Internet

In its Comments in this proceeding, USIPA urged the Commission to maintain a hands-off approach to the Internet in order to permit the unhampered competition that exists in the Internet industry today to continue to shape Internet infrastructure technologies and determine pricing. USIPA urged the Commission to avoid the imposition of any artificial charging mechanism on ISPs, which will reduce competition and threaten the very existence of the thriving new ISP

[1] By Order released January 24, 1997, 12 FCC Rcd 1210, the Chief, Common Carrier Bureau extended the deadline for reply comments to April 23, 1997.

industry. USIPA strongly disagrees with those parties who propose applying the same access charge regime now applied to intercity common carriers purchasing local access from LECs, in addition to the price structure applicable to other businesses ordering local lines.

The system of carrier access charges reflected in Part 69 of the Commission's Rules is fundamentally not based on costs. It is essentially a relic of the age of monopoly control by the Bell System and has very little to do with real economic costs. The Commission has been seeking for years to find ways of phasing out this access charge regime and replacing it with fully competitive pricing, but it would be an understatement to note that it has a very long way to go. The Commission is now wrestling with that very difficult problem in CC Docket No. 96-262. Success may take a very long time to achieve, and, indeed, may never be fully achieved. In the meantime, USIPA submits that it would be a profound mistake to take that economically irrational system of charges and apply it to a new industry that was never part of the old monopoly environment in which technical innovation was so long suppressed. While there may arguably be a need to transition over a period of time from the economically irrational system of charges within the industry so long dominated by that way of doing things, there is no credible argument for taking that mess and applying it for the first time to a new and untainted industry.

B. The Carrier Access Charge Regime Is Not Based on Costs

Most subscriber line costs are non-traffic sensitive. Introduction of a brand new service like Internet access does not cause one iota of increase in such non-traffic sensitive costs. No matter how many hours of day a subscriber line is used, its non-traffic sensitive costs are not increased.

In its 1983 Access Charge Order,[2] the Commission established a tariffed access regime to replace the system of "settlement" and "division of revenue" contracts[3] which for many years had bound all the nation's telephone companies in an elaborate pooling mechanism for sharing revenues from various interexchange services. The Commission created a "common line pool" and authorized the establishment of a nationwide uniform CCL rate component to recover a significant portion of the LEC industry's non-traffic-sensitive costs. The CCL access component was an essential element in the Commission's new expression of the former AT&T-dominated revenue sharing arrangement.

While the Commission recognized the ultimate desirability of adopting what then was called a "Pure 2" plan whereby all non-traffic sensitive costs would be recovered by flat rates,[4] it decided that the need to protect rural and high cost areas from a sudden withdrawal of the subsidies they had received from the

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[2] MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983), modified, 97 FCC 2d 682 (1983), further modified, 97 FCC 2d 834 (1984), further modified, 99 FCC 2d 708 (1984), aff'd in principal part, NARUC v. FCC, 737 F.2d 1095 (D.C Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

[3] NARUC v. FCC, 737 F.2d 1095, 1104-05, 1108 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

[4] 93 FCC 2d at 276.

common carrier industry under the Bell System contractual arrangements required substantial transitional arrangements. The most prominent of these transitional departures from an economically optimal system, the Carrier Common Line charge, initially consisted of several cost elements, but the Commission expressed its expectation that the CCL would eventually be limited to the Universal Service Fund.[5]

The Commission's transitional arrangements maintained many of the characteristics of the monopoly system it replaced. In its Access Charge Order, the Commission observed that: "[i]n the past AT&T has acted as a tariff filing agent for the entire industry and has also performed most of the administrative functions in connection with the settlements pooling arrangement." 93 FCC 2d at 333. As a substitute for AT&T's role of industry coordinator, the Commission created the National Exchange Carrier Association ("NECA") to administer the new common line pool, compute CCL revenue requirements and rates, file CCL tariffs, and bill and collect CCL charges from long-distance carriers.[6] The interstate carrier revenues previously accounted for essentially by AT&T alone were in essence redistributed under competitive conditions among a number of competing intercity carriers, but through the Carrier Common Line charge mechanism the role of AT&T as a contributor to local costs was assumed by

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[5] 93 FCC 2d at 283. See also NARUC v. FCC, 737 F.2d at 1029-30.

[6] 93 FCC 2d at 336; 47 C.F.R. §69.603.

each of the intercity carriers. The Commission arrogated to itself the role formerly played by AT&T as the ultimate decision maker setting overall policy.

The United States Court of Appeals for the District of Columbia Circuit approved the access regime notwithstanding its complexity in order to promote universal service.[7] The Court, however, very clearly and emphatically recognized that:[8]

> The portion of costs which temporarily or permanently will not be borne by the end users, which forms the basis for carriers' access charges, is essentially a subsidy. This subsidy is not logically attributable to a particular class of carriers.

No additional non-traffic sensitive costs are incurred by placing interstate calls. Rather than recovering specifically incurred costs, the CCL is a reflection of the arrangement whereby subscriber line costs are shared nation-wide among participants in the common carrier industry. These costs are unaffected by either the type of call carried over the facilities or by the type of IXC switched access customer. That some of those customers came to be Internet Service Providers made no change in this fundamental scheme.

C. Artificially High Carrier Rates Should Not Be Extended to ISPs

As USIPA made clear in its initial comments, removal of the ISPs from the category of ordinary business users and adoption of some artificial charging mechanism would not serve to facilitate the development and utilization of new

[7] NARUC v. FCC, 737 F.2d at 1108.

[8] NARUC v. FCC, 737 F.2d at 1134.

alternative local infrastructure technologies for ISPs. Historically, BOCs have failed to develop new services when permitted by the Commission to charge higher rates for local telecommunications services. In recognition of this fact, the underlying premise of the local telecommunications provisions contained in the Telecommunications Act of 1996 is to eliminate such artificial rate mechanisms, and allow competition to determine the future local telecommunications landscape.

In light of the new Act, it is astounding that BOCs would even approach the Commission with a proposal to apply exactly what the Commission is ultimately committed to eliminate from existence, to an entirely new service. The fact is, the imposition of artificial charges on ISPs, as the BOCs suggest, would only serve to drive prices to irrational levels, forcing numerous ISPs out of business, and allowing the incumbent local exchange carriers who are now entering the ISP market in droves, to accumulate the vast majority of those ISPs customers.

Access charges must first be brought to true economic costs before they can be applied to new fields such as Internet access. Chairman Hundt has emphatically promised the public that there will be no regulatory meddling with the Internet. In his Chairman's Corner message, posted on the Internet at http://www.fcc.gov/chairman.html, he observes:

> I am strongly inclined to believe that the right answer at this time is not to place restrictions on software providers, or to subject Internet telephony to the same rules that apply to conventional circuit-switched voice carriers. On the Internet, voice traffic is just a particular kind of

data, and imposing traditional regulatory divisions on that data is both counterproductive and futile.

More importantly, we shouldn't be looking for ways to subject new technologies to old rules. Instead, we should be trying to fix the old rules so that if those new technologies really are better, they will flourish in the marketplace.

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...I'm inclined to believe our best guidance is to let technology, competition, and access reform make the problem go away. We are working to open markets so that these forces can operate most effectively.

D. BOC Past Failures to Provide Adequate Service to ISPs Do Not Justify Further Burdening ISPs By Artificially Raising Their Rates

The BOCs do not seek to justify their proposal to make ISPs subject to the same type of access rates as common carriers (or at least rates greater than other business customers) by even attempting to make a showing with respect to actual costs or any other legally significant factor. Instead, their argument is premised on the notion that because, in certain instances, the BOCs have not been able to supply adequate facilities to meet demand, it is necessary to impose extra charges to encourage ISPs to migrate to some yet unbuilt and undefined overlay network. Companies that have failed in the past to bring new technology into the marketplace rapidly nonetheless would have the Commission believe they are prepared on short notice to provide better service if only prices are raised.

In the BOCs twisted way of thinking, their own failure to meet their existing common carrier obligations gives rise not to the obligation to compensate the

members of the public they have failed to serve, but instead to a justification to increase their rates far beyond costs. There is, however, no logical nexus between their statement of a problem and their proposed "solution" to the problem they allege.

E. The BOCs Fail to Describe the "Problem"

Moreover, the "problem" they allege is ill-defined at best. The evidence of a problem they cite is anecdotal. There is no proof that the problem is wide spread, unavoidable or likely to continue into the future, in the absence of extraordinary rate impositions upon a class of customers with whom the BOCs are competing. Underlying causes and specific effects are obscured.

The fact that a given switch or group of transport lines may become overloaded at a given point when the carrier has failed to adequately plan to meet demand does not justify picking out one class of customers for discriminatorily high rate increases. Occasional shortage of facilities may be experienced from time to time on the network for any number of reasons (e.g., new businesses in town with large amounts of calling, public emergencies giving rise to a sudden outpouring of calls, or plain old-fashioned random mistakes on their part). But the network itself is quite capable of shifting facilities in such a way as to minimize such short-term phenomena. Even if the BOCs, as they claim, did not foresee the recent increase in Internet activity in the last year or

so, presumably they understand it now and there is no reason to assume it will continue to underestimate Internet traffic in the future.

While this may require the installation of some new equipment, such installation is a normal part of telephone network activity. The BOCs have not even attempted to show that their installation and other rates are inadequate to cover the cost of such additions. As mentioned, the BOC congestion studies which allege substantial network upgrade costs attributable to ISP trunks do not take into account either the high installation revenues they receive from ISPs or the revenues from originating call second subscriber lines. Notwithstanding, common carriers are under an obligation, pursuant to Section 201 of the Communications Act, to take reasonable steps to meet their customers' increasing needs.

F. The BOCs Seek To Force Competing ISPs To Pay Inflated Prices

For reasons of their own, however, the BOCs simply don't want to meet their ISP customers' needs for service. One of USIPA's members reports, for example, that in one exchange with a top-of-the-line electronic switch with abundant capacity, a BOC has failed to provide Primary Rate Interface trunks it ordered last September and has said it will not provide them before next June. It justifies this nine-month delay (the effect of which is enormous in the highly competitive and rapidly growing Internet access business) on the ground simply that it does not believe that providing it earlier would justify the costs involved. It

does not even claim the existence of "congestion," but simply disregards its statutory obligation to provide service when it believes that filling a competitor's order in a reasonable time is not in its own financial self-interest.

The fact that BOC failure to enlarge and/or upgrade their network to keep up with demand for more sophisticated service is a consequence of monopoly pricing and the unnecessarily slow transition away from the monopoly pricing of the past. The BOCs show that they are fundamentally still pursuing monopolists' way of doing things by seeking yet further deviations from cost-based prices from the regulatory agency rather than getting on with the business of improving their product to more adequately meet their customers' needs. Instead of meeting demand, they seek regulatory intervention to suppress demand and hobble developing services by artificially imposing non-economic costs.

Whatever nominal charges a company says that it pays itself, they are economically meaningless. As a result, the BOCs offering competing Internet access pay themselves real economic costs for use of the telephone network and not the artificially inflated rates they seek to charge their rivals. The price discrimination resulting from increasing the rates charged their competitors would violate Section 202(a) of the Communications Act and by serving their distinctly anticompetitive purposes violate the antitrust laws as well. The fledgling ISPs are, of course, particularly vulnerable to the damage done by such predatory pricing and that is why they are pressing the Commission for action allowing them to increase rates now.

G. The BOC Failure Was Not the Result of Their Not Receiving Forecasts From ISPs

The BOCs seek to excuse their own deficiencies by treating recent growth of the Internet as a form of black magic that telephone companies could not conceivably have taken into account in their network planning. But the fact is that the Internet has been around for many years and its recent growth has been anticipated by many – including at least some of the BOCs who are entering the Internet access market themselves.

Seeking to find the perennial scapegoat to excuse the failures to plan their network adequately, however, the BOCs blame it on other ISPs for failing to provide them with adequate forecasts. This is nonsense. It is far easier to anticipate market growth in the aggregate than it is to forecast what portion of the growth will involve individual companies in a highly competitive market in a rapidly changing industry. The BOCs have the great advantage of receiving data from numerous sources not available to others with which to plan their network enhancements. Moreover, whether easy or difficult to make reasonable forecasts, it is basic to achieving success in any market that a company can forecast demand for its product accurately and pursue growth plans accordingly. Companies that do it well succeed; companies that do it poorly fail.

The fact here, however, is that when the BOCs fail to make adequate forecasts upon which to predicate network growth, it is the ISPs and others who do most of the suffering. Inasmuch as the BOCs are now entering the ISP

business, the consequence of their failure to provide adequate facilities is to damage their competitors and thus to help their own plans to extend their already existing dominance in one field to gain control over another. This state of affairs turns normal marketplace incentives to forecast demand accurately on their head.

Indeed, the BOCs are repeating the pattern established more than twenty years ago when new intercity carriers presented themselves to the Bell System. Bell systematically delayed and refused needed access facilities to their new competitors and when their victims sought relief claimed that it was merely the result of the alleged failure of the new competitors to provide them adequate forecasts. Once again the BOCs are delaying and refusing facilities to ISPs whose market they now intend to invade. With the benefit of their prior anticompetitive experience, however, they now claim the problem was due to their victims' failure to provide them with better forecasts -- even before, but in clear anticipation of, the suits their victims are likely to file against their anticompetitive practices.

The BOCs make much of the characteristics of Internet use that differ from voice use. Internet usage peaks at night, whereas voice traffic peaks earlier in the day. But adding traffic that peaks at a time that is off the aggregate traffic's peak increases the efficiency of the network. Indeed, that is why telephone companies have long offered reduced prices for calls made at night. At one time, consideration was even given to making nighttime use free. Internet

calls also generally last longer than the average. But this difference is not unique to the Internet. Data generally involves longer hold times and the BOCs have had sufficient time to take this characteristic into account in planning their network. Certain types of voice calls, such as those received in call centers, also have long hold times, but the BOCs have not chosen to seek higher charges for them.

The BOC snippet-type discussion also fails to take into account the fact that, since the ISPs are much more grievously affected by any congestion involving their circuits than are the BOCs, they can be expected to take all reasonable steps within their power to minimize it. Thus, the BOC assumption of continued growth in the number of business lines ordered by ISPs fails to account for the fact that ISPs are making, for example, increased use of digital T1 and ISDN Primary Rate Interface trunks. Clearly, in a highly competitive market, the ISPs have every incentive to order greater numbers and higher quality of lines in order to enhance their competitive attractiveness to the public, which has become increasingly attuned to the resulting differences in the quality of ISP service.

The BOC argument that ISPs are ordering more lines than they could have reasonably foreseen is contradicted by their own acknowledgment that CLECs have been providing increasing number of lines to ISPs. If the CLECs foresaw the demand, then the BOCs should have been able to foresee it as well.

The BOCs truly outdo themselves when they complain that CLECs are providing the lines the BOCs are claiming they cannot provide. The CLECs have obtained the business that the BOCs failed to make adequate effort to secure by offering ISPs the service they require. The BOCs claim that, because ISPs do not originate calls, "reciprocal compensation" arrangements among providers of local exchange service give CLECs carrying their traffice an unfair advantage over the BOCs. This argument is more a criticism of reciprocal compensation arrangements than of current ISP pricing. In any event, it ignores the fact that the call origination by ISP customers is generally on BOC facilities and betters its position in the reciprocal compensation process. More fundamentally, the BOCs were and continue to be free to compete for that desirable business. If, however, the BOCs persist in dragging their feet on ISP requests for more lines, they have no one to blame but themselves if someone else does well providing them.

USIPA must also object to instances it has discovered where the BOCs appear to have degraded CLEC services in the method by which they have interconnected the CLECs to their networks. USIPA has uncovered cases where Internet access lines routed through CLECs with very high quality equipment and subscriber lines of high quality became so degraded by the use of BOC lines provided to the CLECs that that they were not able to deliver 28.8 Kbps or even 14.4 Kbps performance. Such circuits clearly will not suffice for ISP business and the result is to prevent CLECs from supplying the ISP market even when

they are fully and proficiently ready and able to do so. Whether this is the result of a BOC practice of furnishing CLECs selectively with the oldest and most degraded equipment on hand or worse, it must be stopped.

H. ISPs Have Generated Highly Lucrative Sales of Second Subscriber Lines for the BOCs

Moreover, in claiming that meeting ISP orders is not desirable business, the BOCs fail to take into account that the ISPs have conferred considerable financial benefit on the BOCs by greatly stimulating the sale of second lines to the homes of Internet users. This is very lucrative for the BOCs since very little equipment or labor is required to get substantial additional charges from the Internet users. Thus while ISPs are paying the same charges as other businesses to the BOCs, they benefit the BOCs more than the average business user by enabling them to derive easy additional income from other subscribers.

I. Conclusions Derived in BOC Congestion Studies are Flawed and Turn The Current Methodology for Assessing Cost Recovery for Local Telecommunications Infrastructure on its Head

Imposition on ISPs of any artificial charges as suggested by the BOCs would turn the rationale behind the current cost recovery methodology for local telecommunications infrastructure on its head. The cost recovery model for local lines is formulated to enable carriers to recover their costs for local loop infrastructure directly from the users who truly cause the costs, originating callers. For example, typical business line tariffs are established to permit a

BOC to recover usage-sensitive charges from an end user originating calls from the line. ISPs do not originate calls on their business lines and that is why the are not typically imposed usage-based charges for the lines.

Under the existing cost recovery methodology, BOCs must collect a substantial portion of their revenues from end users who originate calls to help pay for network upgrades. In fact, BOCs are collecting very high revenues from end users originating calls as a result of record second line sales. The demand for these record second line sales has been pushed by the need for Internet Access.[9]

A study prepared for USIPA by Glen G. Gebhardt, "Proposed ISP Access Fees from an Economic Perspective" ("the Gebhardt Study"), that is set forth in the Appendix to these Reply Comments, shows that one BOC's conclusions regarding its cost recovery methodology for network upgrades is substantially flawed. The Gebhardt study reveals the fact that the formula used in a study submitted by Bell Atlantic for determining network upgrade cost recovery completely fails to take into consideration the existing cost recovery methodology for local telecommunications infrastructure. Gebhardt shows that Bell Atlantic does not take into consideration in any manner the enormous revenues it has derived from end user second line sales for Internet access, which are all originating calls over Bell Atlantic's local network, in determining the cost recovery necessary for network upgrades attributable to overall ISP traffic. In

[9] See Comments of the United States Internet Providers Association, filed March 24, 1997, at 15.

fact, Gebhardt concludes that when all originating call lines are taken into consideration, Bell Atlantic has made an enormous profit for its shareholders, in addition to fully paying for the alleged network upgrades.

In fact, every "congestion" study submitted by the BOCs and other carriers appear to use the same flawed formula for determining network upgrade cost recovery. For example, while not a study, in its comments, Southern New England Telephone Company ("SNET") maintains that it spent $3.15 million in the last year to upgrade its local switching and transport functions to accommodate 3,216 new trunks ordered by ISPs. SNET does not mention in its description of these network upgrade costs, however, how much it made on installation charges for the lines, or the total amount of costs it has recovered from the sale of call originating second lines used for Internet access by end users.[10]

J. The BOC Studies Do Not Require the Commission to Dictate the Outcome That Should Be Left to Competition

Over the long range, Internet traffic will probably migrate off the current public switched telephone network (PSTN). USIPA strongly disagrees, however, that forcing ISPs to pay inflated prices would facilitate such a move. The normal forces of the marketplace should be allowed to determine the nature, the sequencing and the speed of any such transition. Experts have strongly differing

[10] See Comments of SNET, filed March 24, 1997, at 14.

views as to what an ultimate configuration should be. Competition permits the marketplace to determine which ideas ultimately prevail and what companies obtain what shares of the overall network that develops. The ubiquity of the PSTN may enable it to provide a useful role in making future transitions. But the BOC advantage of ubiquity is offset by their sluggish decision-making and arrogant attitudes to innovation from other sources. Instead of competing fairly and squarely, the BOCs are prone to make inappropriate use their control over bottleneck facilities and also ask the Commission to dictate the result they desire, rather than take their chances in the marketplace.

The Commission must not be fooled by self-serving BOC "congestion" studies that show ISPs are causing high costs and inefficiencies on BOC networks, and which require a new artificial charge to cure. As previously mentioned, the inadequacy of such studies is discussed in detail in the attached Gebhardt Study, which concludes:

> The RBOC justifications for such fees as outlined in the Bell Atlantic study are flawed. Using Bell Atlantic's data it has been shown serious congestion let alone imminent network collapse are unlikely. Furthermore, it has been shown that the RBOCs make a substantial profit on their investments to support increasing traffic.

K. Raising the Rates of ISPs Will Not Facilitate the Development of New ISP Local Infrastructure Alternatives

Contrary to the BOCs claim that ISPs have no incentive to move their traffic off the PSTN because of the lower costs for its use resulting from the ESP exemption, are eager to obtain access to alternative local telecommunications

infrastructures over which to reach their end users. However, the highly insufficient "last-mile" of the local network controlled by BOCs creates a substantial disincentive for ISPs to use transmission technologies other than the PSTN. ISPs are limited to offering a bandwidth of a maximum 56 Kbps to their end users through the PSTN copper wires reaching BOCs customer homes, with the exception of basic rate interface integrated services digital network ("BRI ISDN"), which makes up a very small portion of end user lines. Even if ISPs move off the PSTN onto "bypass" local networks, and pay higher costs to BOCs for access to their local customers, they will still be limited to a maximum of 56 Kbps bandwidth over which to provide service to their customers.

Because BOCs have failed to construct in any substantial way the advanced local telecommunications infrastructures that are desired by ISPs, ISPs currently have very little competition-based incentive to move their traffic to any other type of network configuration. Although there is much discussion by BOCs of the development of new technologies such as digital subscriber line ("xDSL"), which permits a faster broadband connection to the home, the BOCs have yet to make any of these technologies available or affordable to ISPs or their end users. In fact, it appears that BOCs will not make these technologies available or affordable for many years to come. [11] Contrary to what the BOCs assume, ISPs should not be expected to reconfigure their networks to move onto BOC controlled bypass networks which provide no more capacity than the

[11] See Remarks of Pat White, Bell Atlantic, before the FCC Bandwidth Forum, January 23, 1997.

existing switched network, in the hope that maybe some day in the future, BOCs will invest in broadband delivery infrastructures to homes.

Thus, the root of this problem is not ISP congestion on the PSTN, but rather is the continued vestiges of a 100-year old local telephone monopoly system which is far behind the times with respect to the advanced technologies necessary for delivering today's broadband traffic. The solution to the problem is not to permit the imposition of another artificial regulatory charge, but rather to impose the competitive provisions of the Telecommunications Act of 1996 on the BOCs. USIPA explained in its comments that competition will ensure that the broadband network needed to deliver advanced telecommunications services to homes and businesses will shortly become a reality. The Commission must realize that only competition will solve these problems.

Competition will ensure that the "last mile" network constriction is eliminated in the most efficient way. If BOCs are forced to interconnect and provide physical access to their central offices, lines, poles, conduits, and other facilities, competitors will begin to build broadband infrastructures into homes and businesses. This, in turn, will force the BOCs to finally construct and price new technologies competitively, or face loss of markets. In addition, this competition will drive prices for network elements to lower levels, ensuring that advanced telecommunications services are affordable. When ISPs have a choice of providers, technologies and competitive prices, and are no longer faced with artificial regulatory charges and promises of new network

infrastructures built and controlled by single providers, they will have the incentive to move traffic off the PSTN.[12]

L. The BOC Proposals Would Devastate the ISP Industry

A new access charge, as the BOCs propose, would very likely put the vast majority of ISPs out of business overnight. For example, even a $0.01 per minute usage-based rate assessed on the typical ISP would result in that ISP paying approximately a minimum of $30 more per month per line for local telecommunications infrastructure.[13] Most ISPs could not endure this local telecommunication infrastructure cost increase and would be forced out of business. Profit margins on dial-up Internet service are too thin to bear even the slightest increase in costs.[14] USIPA urges the Commission not to permit the imposition of any new rate increase on the fragile ISP industry. An increase in rates could lead to the demise of the intensely competitive characteristics of the Internet industry.

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[12] This reasoning is in stark contrast to that proposed by the BOCs. For example, U.S. West states in its comments that, but for the ESP exemption, "LECs would normally have the incentive to devise superior services for ESPs which both attracted them to remain on their networks and which provided them service in a less costly (more efficient) manner." If this was even remotely true, then the BOCs would already be offering ISPs more advanced alternatives at competitive prices.

[13] This conclusion assumes that the line is used by 10 customers for a very conservative average of 5 hours (300 minutes) each per month. If the ISP must pay ($0.01x3000 minutes) for each line, then its increased cost per customer is $3. Now assume the average customer spends ½ hour (30 minutes) per day on the Internet. The total number of minutes for all 10 customers using that line ½ hour per day for the month (9000 minutes) would cost the ISP an additional ($0.01x9000 minutes) $90 per month, for a per customer cost of an additional $9 per month.

[14] See USIPA comments at 17, fn. 24.

As the Assistant Secretary of Commerce for Communications and Information has observed[15]:

> The Commission decision in the 1980's not to regulate enhanced services was a wise one that has conferred substantial benefits on American consumers. The Telecommunications Act of 1996 in no way requires a change in that decision.
>
> The Internet now connects more than 10 million computers, tens of millions of users, and is growing at a rate of 10-15 percent a month. This growth has created opportunities for entrepreneurs to develop new services and applications such as videoconferencing, multicasting, electronic payments, networked virtual reality, and intelligent agents. Perhaps more importantly, it creates a growing number of opportunities for consumers to identify new communication and information needs and to meet those needs. The Commission should not risk stifling the growth and use of this vibrant technology in order to prevent some undemonstrated harm to long distance service providers.

M. If and When the Commission Were to Begin a Further Inquiry, It Should Employ a Structured Evidentiary Proceeding With Opportunity for Discovery of All Relevant Facts Within Possession of the BOCs

USIPA does not believe the Commission needs to conduct an investigation at this time into the relationship between Internet access service and local telephone company practices. But to the extent the Commission were to engage in a further proceeding into the interactions between the Internet service and local telecommunications markets, it should structure its investigation carefully to assure full understanding of the relevant facts. At such time as it chooses to initiate such an investigation, the Commission should take

[15] Letter of Larry Irving of May 8, 1996 to Chairman Reed Hundt, published at http://www.ntia.doc.gov/ntiahome/fccfilings/050896_actaletter.html.